machinery a reasonable time after an accident to an employee is admissible, in the absence of evidence of a change of condition in the meantime; but, when considerable time has elapsed, the burden of proof shifts, and the evidence is inadmissible, unless the condition has not changed.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 913-927, 932; Dec. Dig. § 270.* 9 Va.-W. Va. Enc. Dig. 724.]

4. Appeal and Error (§ 1053*)—Erroneous Admission of Evidence—Correction by Instructions.—Where, in an action for injuries to a railroad employee, the issue was whether the brake on a car was defective, and the court erroneously admitted the testimony of the general manager of the company, given on a former trial, as an admission that the brake on the car was in the same condition more than a year after the accident as at the time of the accident, the error was not cured by a charge that, if the general manager did not intend to say that the brake was in the same condition at the last trial as at the date of the accident, his testimony on that subject must be disregarded; he testifying at the last trial that on the former trial he merely intended to identify the parts of the brake.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 4178-4184; Dec. Dig. § 1053;* Trial, Cent. Dig. § 977. 9 Va.-W. Va. Enc. Dig. 724.]

Error to Circuit Court, Orange County.

Action by one Chichester, administrator of Charles S. Waller, deceased, against the Potomac, Fredericksburg & Piedmont Railroad Company. There was a judgment for plaintiff, and defendant brings error. Reversed.

See, also, 111 Va. 152, 68 S. E. 404, 16 Va. Law Reg. 462.

St. Geo. R. Fitzhugh and *John G. Williams,* for plaintiff in error.

E. H. De Jarnette, Jr., for defendant in error.

DEANE *v.* TURNER et al.

March 14, 1912.

[74 S. E. 165.]

1. Boundaries (§ 26*)—Equity—Jurisdiction—Disputed Boundary.—A bill alleged that complainants had the legal title to and were in possession of land, and that a cloud had been created upon their title by defendant's recording of an old survey, and prayed for relief quieting complainant's possession, and further alleged that defendant had trespassed upon the woodland of complainants, claiming title thereto, and was disturbing them in the quiet enjoyment of their

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

land, and prayed that he be enjoined from such trespass and from making any further claim to the land; but the pleadings and the evidence showed that the only matter in controversy was the true location of a boundary line between the land of the parties: Held, that, considered as a suit to settle a disputed boundary line, equity had no jurisdiction, and that no peculiar equity appeared, entitling complainants to invoke the aid of equity.

[Ed. Note.—For other cases, see Boundaries, Cent. Dig. §§ 139, 140; Dec. Dig. § 26.* 2 Va.-W. Va. Enc. Dig. 610.]

2. Injunction (§ 118*)—Pleading—Trespass.—A party seeking to restrain a trespass must set forth the facts constituting the injury, and either allege that an irreparable damage will result if the injunction is denied, or that the defendant is insolvent, or otherwise his bill is fatally defective.

[Ed. Note.—For other cases, see Injunction, Cent. Dig. §§ 223-242; Dec. Dig. § 118.* 7 Va.-W. Va. Enc. Dig. 611.]

Appeal from Circuit Court, Greene County.

Bill by Emma M. Turner and another against D. C. Deane. Decree for complainants, and defendant appeals. Reversed, and bill dismissed.

John S. Chapman, for appellant.
Chas. A. Hammer, for appellees.

CRUTCHFIELD et al. *v.* GREER.

March 14, 1912.

[74 S. E. 166.]

1. Wills (§ 601*)—Construction—Fee Simple—Limitation Repugnant to Fee—"Heirs."—Testatrix, dying without children, declared that, should she die without heirs, her entire property was to go to her husband, to dispose of as he wished, and by a following clause declared that, should the husband die without will after her decease, the property was to go to her brother. Held, it being conceded, that "heirs," meant "children," that the first paragraph devised to the husband a fee simple in the real estate and an absolute estate in the personal property, with the right of absolute disposition, so that any limitation over was repugnant to the fee and void.

[Ed. Note.—For other cases, see Wills, Cent. Dig. §§ 1340-1350, 1608; Dec. Dig. § 601.* 11 Va.-W. Va. Enc. Dig. 811, 852. 14 Va.-W. Va. Enc. Dig. 890.

For other definitions, see Words and Phrases, vol. 4, pp. 3241-3265; vol. 8, pp. 7677, 7678.]

2. Wills—(§ 470*)—Construction as a Whole.—In arriving at the

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*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.